Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1111

ALLYN R. SIELAFF, et al.,

Petitioner,

vs.

SAMUEL DREW, et al.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPPEALS FOR THE SEVENTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. ——

ALLYN R. SIELAFF, et al.,

Petitioner,

vs.

SAMUEL DREW, et al.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPPEALS FOR THE SEVENTH CIRCUIT

Petitioner, Allyn R. Sielaff, et al., respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, which affirmed the decision of the United States District Court for the North District of Illinois, Eastern Division.

OPINIONS BELOW

The order of the Court of Appeals is unpublished, and a copy of it is attached as "Appendix "A". The order of the Court of Appeals denying a petition for rehearing and suggestion for rehearing *en banc* is attached as Appendix "B". The memorandum decision of the District Court, reported as 443 F. Supp. 389 (1978), is attached as Appendix "C".

JURISDICTION

The order of the Court of Appeals denying the petition for rehearing was entered on December 5, 1978. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Was it an abuse of discretion to find that plaintiffs were the prevailing party and to award attorney's fees under the Civil Rights Attorneys Fees Awards Act of 1976 for the entry of a consent decree in which plaintiffs did not receive any of the relief prayed for, and where the relief they did obtain, as the trial court found, was not required by the United States Constitution?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment to the United States Constitution: "The right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated. . . ."

42 U.S.C. § 1988: "In any action or proceeding to enforce a provision of . . . [42 U.S.C. § 1983] . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs."

STATEMENT OF THE CASE

On November 15, 1973, Samuel Drew filed a *pro se* complaint alleging violations of his Fourth Amendment rights and 42 U.S.C. § 1983 while he was a prisoner at Stateville Correctional Center in Illinois. He alleged that during a search of his cell, legal documents and personal correspondence were destroyed and a radio, wristwatch, and art supplies were seized by defendants. Plaintiff asked for the return of his personal property, monetary damages, the right to be present during all future cell searches, and a declaratory judgment. Counsel was appointed to represent Drew, and an amended complaint was subsequently filed which sought the same relief for all residents and former residents at Stateville who have been or may be subjected to violations of their Fourth Amendment rights.

The action was settled by the entry of a Settlement Order (Appendix "D") which stated that nothing in the order constituted an admission by defendants as to the facts alleged in the amended complaint; that even assuming the facts alleged by the plaintiffs to be true, the Court would find the current Administrative Regulation, if enforced, was adequate to prevent the types of abuses alleged by plaintiffs; that defendants were enjoined to observe and enforce their Administrative Regulation and the Fourth Amendment rights of plaintiffs; and that each resident whose cell is searched is to be provided with the date, time, and identity of each officer participating in the search and a list of any property seized during the search.

Depositions of four defendants indicated that written records were kept as to the date, time, and officers involved in each cell search, and that the resident was not given a copy of the record unless contraband was seized

from the cell. This method of notice to the resident regarding the confiscation of property reflected the administrative regulation then in force.

Counsel for plaintiffs filed a petition for attorney's fees and costs requesting $18,191.25 (computed at $75 per hour) in attorney's fees and $183.21 in costs. Defendants filed a memorandum in opposition. The District Court (Appendix "C") found that the consented-to relief of giving a resident written notice of a cell search, as opposed to merely giving written notice of a seizure, was substantial and that plaintiffs were the prevailing party in the lawsuit. The Court awarded $7,900 in fees and excluded compensation for the time in which counsel was associated with a law firm which had a reputation for not seeking or accepting awards of attorney's fees in cases of this type.

The Court of Appeals for the Seventh Circuit affirmed the District Court decision in an unpublished order (Appendix "A") and it denied a petition for rehearing (Appendix "B".) Plaintiffs' counsel then filed a verified bill of costs for $5,670.76 to cover costs and attorney's fees for appellate work.

REASONS FOR GRANTING THE WRIT

I.

AN AWARD OF FEES UNDER THE CIVIL RIGHTS ATTORNEYS FEES ACT OF 1976 IS NOT PROPER UNLESS PLAINTIFF PREVAILS ON A CONSTITUTIONAL ISSUE.

The Court of Appeals decided that, because plaintiff class in a civil rights action gained "matters of substance" in a consent decree, the trial court could, in its discretion, treat them as a prevailing party under the new statute and award $7,900.00 in attorney's fees plus expenses. It is undisputed that plaintiffs did not obtain any of the relief originally prayed for, and the relief they did obtain, as the trial court noted, was not required by the Constitution. The award of attorney's fees for relief which is not of constitutional magnitude is unwarranted, *Nadeau* v. *Helgemoe,* 581 F. 2d 275 (1st Cir. 1978).

The decision by the Court of Appeals will encourage the filing of both meritless and *de minimus* lawsuits on behalf of prisoners; it will raise the cost of settlement in *every* prisoner case by $8,000 (or by $13,800 if fees and costs for litigating the appeal are allowed); and it will force the Department of Corrections to obtain a *judicial* determination of the constitutionality of all attacks upon its Administrative Regulations.

The parties agreed to the entry of a Settlement Order in which the Department of Corrections was enjoined to observe and enforce the rights of inmates as guaranteed under the Fourth Amendment and the Department's Administrative Regulations. This is an acknowledgment of a pre-existing duty which the Department will, and must,

agree to at any time. This does not resolve an issue of constitutional law. Absent a finding by the Court that these rights were not observed and enforced in the past, and the Court did not enter such a finding, this portion of a settlement agreement should not be used as a basis for the award of attorney fees. If such an agreement is the basis for the award of fees, and this is one of two assumptions which must be drawn from the Panel's decision, the Department of Corrections will be forced to seek a *judicial* determination of all attacks on past practices rather than to resolve lawsuits through negotiation and a consent decree.

The second assumption implicit in the Panel's decision is that the modification of an Administrative Regulation, despite a finding by the trial court that the modification is not a constitutional requirement, is a basis for the award of attorney's fees. The parties did not dispute the fact that every time contraband was *seized* from an inmate's cell, he was given written notice of the seizure pursuant to Administrative Rule 401. The Settlement Order provided for a modification of this Regulation so that each time a cell was *searched,* the inmates were to be given written notice of the date, time and identity of the officers who conducted the search. This Petitioner argues that absent a finding that the Fourth Amendment is violated by the failure to give inmates written notice after a cell search, plaintiffs have not prevailed and their attorney is not entitled to an award of fees. The District Court is unable to make such a finding because the Final Settlement Order expressly states:

> This Court finds, with the consent and agreement of the parties herein, that even assuming the facts alleged by plaintiff to be true, which this Court does here-

> by assume for purposes of this order, that *the Court would nevertheless find the Administrative Regulation 401, if enforced, is adequate to protect the types of abuses alleged by the plaintiff as described above.* (emphasis added)

The Panel's decision failed to consider the First Circuit's unassailable opinion on this issue. "If it has been judicially determined that defandants' conduct, however beneficial it may be to plaintiffs' interests, is not required by law, then defendants must be held to have acted gratuitously and plaintiffs have not prevailed in a legal sense." *Nadeau* v. *Helgemoe,* 581 F. 2d at 281. The conclusion which the Panel should have drawn is that the subsequent change in the Administrative Regulation was a gratuitous act by defendants and that plaintiffs did not prevail in a legal sense.

II.

PLAINTIFFS DID NOT "PREVAIL" OVER DEFENDANTS WITHIN THE MEANING OF THE STATUTE.

Plaintiffs sought the following relief in their complaint: the return of personal property, money damages, the right to be present during all cell searches, and declaratory relief. Plaintiffs did not attain any of the relief requested. In their negotiations, defendants were successful on each of these points. The only change required of them was to give each inmate written notice after his cell had been searched. This change was of negligible importance because the information was already maintained and available and the defendants' right to search a cell in the absence of the inmate remained unqualified. (Written notice was already given after a seizure of contraband, and four correctional officers stated in depositions that written records were

maintained as to each cell search. By not requiring the residents to be present during the search of a cell, the search does not have to be scheduled around the work assignment and out-of-cell activities of the inmates and it avoids unnecessary confrontation between staff and inmates on a matter which could quickly became very personal.)

In an abstract sense, the right to be informed in writing of the date, time, and identity of persons who searched a cell is a reasonable and practical alternative to allowing an inmate to be present during the search of his cell and, thus, may be considered an advancement in human rights. In the context of the adversary setting in which this lawsuit was litigated, the right is *de minimus.* After comparing the relief sought by the plaintiffs, the defendants' denial of any entitlement to that relief, and the ultimate resolution of the controversy, it was an abuse of discretion to find that plaintiffs "prevailed" over defendants. Nonetheless, counsel was awarded $7,900 in attorneys' fees (or $13,800 if fees and costs for litigating the appeal are allowed) under a statute which requires that one party "prevail" over the other.

III.

PLAINTIFFS WAIVED THEIR RIGHT TO AN AWARD OF FEES BY FAILING TO NEGOTIATE THE ISSUE WITH DEFENDANTS.

Basic notions of fairness indicate that it was an abuse of discretion for the trial court to interfere and materially alter an agreement reached between the parties. The Settlement Order did not provide for attorney's fees, and this case would not have been settled if a demand for fees had

been made during negotiations. Defendants were under the impression that plaintiffs' counsel was rendering services *pro bono*. The trial partially shared this impression because it denied the request for fees for the time period in which counsel was employed by Schiff, Hardin and Waite. At the time counsel left the employment of the law firm and went into private practice in January, 1976 the fact that legal services were no longer performed *pro bono* was never mentioned and, under the prevailing law, any expectation of fees was unwarranted. *Alyeska Pipeline Service Co.* v. *The Wilderness Society,* 421 U.S. 240 (1975).

The Panel's decision overlooked this argument, and it did not reconcile its opinion with the case law which has dealt with the issue. Even when a statute provides for the payment of attorney's fees, the parties are held to the agreement they reached through negotiation, and the court will not award attorney's fees if the parties did not include it in their agreement. *Cruz* v. *Pacific American Insurance Corp.,* 337 F. 2d 746 (9th Cir. 1964); *Gamlen Chemical Co.* v. *Dacar Chemical Products Co.,* 5 F.R.D. 215 (W.D. Pa. 1946). It is significant to note that in both *Cruz* and *Gamlen,* unlike this case, there was no doubt but that plaintiff was the prevailing party.

IV.

THE AMOUNT OF FEES AWARDED WAS UNREASONABLE BECAUSE IT WAS NOT PROPORTIONATE TO THE EXTENT TO WHICH PLAINTIFF PREVAILED.

The trial court's award of fees was based upon all of the time expended on the litigation while counsel was in private practice. Every circuit which has considered the issue agrees

that an award of attorneys fees should be proportionate to the relative success of the litigation. *Batiste* v. *Furnco Construction Corp.,* 503 F. 2d 447 (7th Cir. 1974), *cert. den.,* 420 U.S. 928 (1975); *Nadeau* v. *Helgemoe, supra; Pearson* v. *Electric Co.,* 542 F. 2d 1150 (10th Cir. 1976); *Morton* v. *Charles County Board of Education,* 373 F. Supp. 394 (D. Md. 1974) *aff'd* 520 F. 2d 871 (4th Cir. 1974), *cert. denied,* 423 U.S. 1034 (1975); *Shaeffer* v. *San Diego Cabs, Inc.,* 462 F. 2d 1002 (9th Cir. 1972) and *Marr* v. *Rife,* 545 F. 2d 554 (6th Cir. 1974).

> ". . . an award of attorney's fees can only be made to a prevailing party and as a general guideline the amount of the award should be proportionate to the extent the party has prevailed in the suit. *Batiste, supra* at 451.

The argument has already been stated that plaintiffs did not prevail with respect to the claims raised in the complaint—declaratory relief, return of personal property, money damages and the right to be present during a cell search—and that the relief obtained, written notice of the fact that a cell was searched, is not of constitutional magnitude. In light of the plaintiffs' relative success, or failure, in this litigation, the lower court should not have awarded any attorney's fees.

If plaintiffs had prevailed on all issues raised in the complaint, the calculation of the amount of fees would undoubtedly have been the same—number of hours worked times the hourly rate. The award of $7,900.00 in attorney's fees is unreasonable and clearly erroneous.

If this Court does not agree that the lower court opinion should be reversed, then this case should be remanded for further proceedings to determine the extent to which plain-

tiffs were the prevailing party. As a part of the determination, the lower court should bear in mind the standard by which defendants are entitled to attorney's fees. The standard, enunciated in *Christianburg Garment Co.* v. *E.E.O.C.*, —— U.S. ——, 98 S. Ct. 694, 46 L.W. 4105 (1978) and applied to cases decided under the Civil Rights Attorney's Fees Awards Act in *Nadeau* v. *Helgemoe, supra,* is whether the litigation of any of plaintiffs' claims was "frivolous, unreasonable or groundless, or that plaintiff continued to litigate after it clearly became so." 98 S. Ct. at 701. Clearly plaintiffs' inability to obtain any of the relief prayed for in either their original or amended complaint should entitle defendants to present their position to the lower court. (Both *Christianburg* and *Nadeau* were decided after defendants submitted their Memorandum in Opposition to Plaintiffs' Petition for Attorney's Fees and Costs).

V.

THE DISTRICT COURT SHOULD NOT AWARD THE PAYMENT OF EXPENSES WHICH ARE NOT PROVIDED FOR BY STATUTE.

Taxable costs may only include those items authorized by statute, *Alyeska Pipeline Service Co.* v. *The Wilderness Society, supra,* and there exists no statutory right to the payment of out-of-pocket expenses in an award of fees. *Keyes* v. *School District No. 1,* 439 F. Supp. 393 (N.D. Cal. 1977). All of the "costs" claimed by plaintiffs-appellees are out-of-pocket expenses which are not provided for by 28 U.S.C. § 1920. One exception is the cost for duplication of papers and an award of this cost is purely discretionary, assuming that one of the parties prevailed.

CONCLUSION

For the reasons stated above, it is respectfully requested that the Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit be granted.

Respectfully submitted,

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APPENDIX "A"

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Unpublished Order Not To Be Cited Per Circuit Rule 35
(Argued October 25, 1978)
October 25, 1978
Before

Hon. THOMAS E. FAIRCHILD, Chief Judge

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. WILBUR F. PELL, JR., Circuit Judge

SAMUEL DREW, et al.,
Plaintiffs-Appellees,

vs.

No. 78-1281
ALLYN R. SIELAFF, et al.,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 73-C-2911
Prentice H. Marshall, *Judge.*

ORDER

The Court, having read the briefs, addressed itself to the record, and heard oral arguments by counsel on behalf of the appellants, announced in open court that the judgment appealed from is AFFIRMED.

Appellants have conceded two points addressed in their opening briefs by reason of the Supreme Court's decision in *Hutto* v. *Finney*, 46 U.S.L.W. 4817 (June 23, 1978). With respect to appellants' remaining points, it appears that plaintiffs gained matters of substance through the consent decree, even though they did not receive types of relief originally prayed for. It was within the court's discretion to treat plaintiffs as prevailing under Civil Rights Attorney's Fees Awards Act of 1976. Inclusion, along with the attorney fees, of certain expenses incurred as incidents of services rendered by counsel is reasonable.

According, the Clerk of this Court is directed to enter judgment AFFIRMING the judgment appealed from.

APPENDIX "B"

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
December 5, 1978
Before
Hon. THOMAS E. FAIRCHILD, Chief Judge
Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. WILBUR F. PELL, JR., Circuit Judge

SAMUEL DREW, et al.,
Plaintiffs-Appellees,

vs.

No. 78-1281
ALLYN R. SIELAFF, et al.,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 73-C-2911 Prentice H. Marshall, *Judge.*

ORDER

On consideration of the petition for rehearing and suggestion for rehearing *in banc* filed in the above-entitled cause by defendants-appellants, no judge in regular active service has requested a vote thereon, and all of the judges on the original panel have voted to DENY a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

APPENDIX "C"

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SAMUEL DREW, individually and on behalf of all other persons similarly situated,
Plaintiffs,

v.

ALLYN R. SIELAFF, et al.,
Defendants.

No. 73 C 2911

MEMORANDUM DECISION

Plaintiff Samuel Drew is a resident of the Illinois Correctional Institution at Stateville, Illinois. He commenced this action *pro se* alleging violations of his Fourth Amendment rights and 42 U.S.C. § 1983. Jurisdiction is here under 28 U.S.C. § 1343. We appointed Ms. Martha M. Jenkins of the Chicago bar to represent Drew. An amended complaint was filed in which plaintiff sought relief for a class of all residents and former residents of Stateville who have been subjected, continue to be subjected or may be subjected in the future to searches of their cells by officers, employees or agents of the Illinois Department of Corrections in violation of their Fourth Amendment rights.

After extensive pre-trial preparation and negotiation, the action was settled by the entry of a consent decree on April 22, 1977, in which defendants and their successors were enjoined to observe and enforce the rights of residents

under the Fourth Amendments, to observe and strictly enforce the provisions of Administrative Regulation 401 of the Department of Corrections and to provide each resident whose cell is searched, the identity of each officer participating in the search and a list of any items seized as a result of the search. The consent decree also required that it be conspicuously posted at Stateville.

Ms. Jenkins has now petitioned for an award of attorneys' fees. Defendants do not challenge our authority to make such an award under the Civil Rights Attorney's Fees Awards Act of 1976, P.L. 94-559. *Bond* v. *Stanton*, 555 F. 2d 172 (7th Cir. 1977); *Finney* v. *Hutto*, 548 F. 2d 740 (8th Cir. 1977). Rather defendants assert the plaintiff class was not a prevailing party under the Attorney's Fees Act; the relief obtained was *de minimus;* in our discretion we should not divert funds needed for prison rehabilitation to the award of attorneys' fees; and in any event Ms. Jenkins should not be compensated at the rate she requests ($75 per hour) nor should she be compensated for the time she devoted to the matter while she was associated in the practice with the firm of Schiff Hardin & Waite.

We find that the plaintiff class was a prevailing party. True the consent decree did not find nor did defendants concede the constitutional violations alleged by plaintiff. But it is undisputed that a controversy existed over how cells of residents can be searched consistent with the Fourth Amendment and the Department of Corrections Administrative Regulation 401. Plaintiff sought a decree that a resident must be present when his cell is searched. In settlement negotiations which were conducted in our presensce, it emerged that the request was impracticable in certain situations. Emergencies arise which must be dealt with

immediately. Considerations of safety for staff and residents may dictate the search of a cell in the absence of its resident.

However, the practice and procedure which obtained prior to the entry of the consent decree did not give a resident any notice that his cell had been searched unless contraband was seized. Nor was he advised of the identity of the staff who searched the cell. Thus, a resident who believed himself the victim of an unreasonable search and perhaps the seizure and confiscation of non-contraband had no sure way of ascertaining when the search occurred or what staff members had been participants in it. In these circumstances, he was virtually helpless to seek any relief from an unlawful search.

These shortcomings in defendants' practice and procedure were remedied by the decree. Detailed post-search notice is now required. The resident will now know the time of any search of his cell and the persons against whom he should complain if he is of the belief that the search or its consequences were unlawful.

We find that this consented-to relief is substantial. Furthermore, we infer from the absence of any objections to the consent decree by members of the plaintiff class that the residents of Stateville regard the decree as providing them with substantial relief. Accordingly, we find that the plaintiff class was a prevailing party.

Nor can the relief obtained be characterized as *de minimus*. Defendants now suggest that the new notice practice imposed by the decree was in existence prior to the decree. But those facts were not disclosed in settlement negotiations conducted in our presence and in our chambers. All that existed prior to the decree was notice of seizure.

Notice of search qua search was not served upon the resident, nor was he advised as to the participants of the search. The post-search notice described by the decree was a reasonable substitute for resident presence at all searches. While the remedy was a simple one, it was not a minimal advance in the preservation of those Fourth Amendment rights which residents of correctional institutions enjoy. It was a substantial step toward the preservation of those rights.

We know from our handling of this case and other cases pending before us dealing with the conditions at the Stateville Correctional Facility that the Illinois Department of Corrections has substantial budgetary problems. We also recognize that residents of correctional institutions initiate many civil rights actions against the administrators of those institutions complaining of alleged violations of constitutional rights. Some of those actions are frivolous. Others, such as this one, appear to be meritorious. While the benefits conferred by the Civil Rights Attorney's Fees Awards Act of 1976 should not be a windfall for the bar, neither should the bar be expected to prosecute an action which results in substantial relief for the plaintiff class without compensation merely because defendants such as those in the case at bar have budgetary problems and are faced with large numbers of frivolous actions. In the circumstances of this case, just as in any other case where attorney's fees are an appropriate portion of the remedy granted, each case should turn on its own merits and awards should be made which are fair and equitable under all of the circumstances.

Ms. Jenkins is a lawyer of extraordinary ability. She has had extensive experience in all types of litigation in-

cluding civil rights litigation. Today she is enaged in the individual private practice. However, during a portion of her representation of the plaintiff class she was associated with the Chicago firm of Schiff Hardin & Waite. It is our understanding from other civil rights litigation which we have heard in which members or associates of that firm represented prevailing parties that the firm does not seek or accept awards of attorney's fees in cases of this type. Accordingly, as defendants urge we have excluded from our consideration the 137.25 hours which Ms. Jenkins devoted to this action while she was associated with Schiff Hardin & Waite.

The materials which she has presented in support of her fee petition demonstrate that she worked assiduously on this matter. She took six depositions. She interviewed over sixty residents and staff members of Stateville. She conducted a survey by mail of the departments of corrections of all fifty states to ascertain how they handled cell searches. That mail survey was followed up by extensive telephone interviews with supervisory personnel of many of the departments of corrections. She submitted briefs of high quality in behalf of her clients. She readied the case for trial and put herself and her clients in the strongest possible position for negotiation of a settlement. Had the case not been settled, she was ready to proceed to an adversary trial which would have been lengthy and complex.

Her detailed time records throughout her engagement show that she has devoted only 242.5 hours of time to this case. Of that, 137.5 hours occurred while she was with Schiff Hardin & Waite. The remaining 105.25 have been devoted since she entered the individual private practice. We think this time expenditure to be exceptionally reason-

able. It demonstrates an exceptionally efficient utilization of time.

Ms. Jenkins asks for an award at the rate of $75 per hour which she represents to be her current charging rate. That is a reasonable rate for a lawyer of her outstanding background and experience. Its reasonableness is enhanced in our judgment by the modest amount of time which she has reported in respect to this engagement.

Accordingly, we have concluded that Ms. Jenkins is entitled to be compensated at her regular hourly rate of $75 per hour for the 105.25 hours of time which she has devoted to this engagement since entering the individual private practice. In addition, she is entitled to recover her out-of-pocket expenses totalling $183.21 which she has itemized. In respect to the latter item, we note that certain of those expenses were incurred while she was associated with Schiff Hardin & Waite. We would expect that she would reimburse that firm for those expenses.

Accordingly, it is ordered and adjudged that Martha M. Jenkins, attorney for plaintiff Samuel Drew and the plaintiff class, have and recover from defendants attorney's fees in the amount of $7,900.00 and out-of-pocket expenses in the amount of $183.21, for a total of $8,083.21.

ENTER:

/s/ Judge Prentice H. Marshall

DATED: January 16, 1978.

No. 73 C 2911

APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SAMUEL DREW,
Plaintiff,

vs.

ALLYN R. SIELAFF, et al.,
Defendants.

No. 73 C 2911

FINAL SETTLEMENT ORDER

The plaintiff in this proceeding has alleged that when cell searches are conducted at the Stateville Branch of the Illinois Department of Corrections, that frequent abuses occur, in particular:

(a) Destruction of personal and legal property;

(b) Unnecessary confiscation, theft or disappearance of personal property for which a resident has a permit or is otherwise entitled under the rules, regulations and administrative bulletins of the Illinois Department of Corrections to possession; and

(c) Leaving the cell in a substantially worse condition than it was found.

Nothing in this order shall constitute an admission by the defendants of any of the facts alleged in the Second Amended Complaint, or that the facts therein stated are sufficient to state a claim for relief.

This Court finds, with the consent and agreement of the plaintiff and defendants herein, that even assuming the facts alleged by the plaintiff to be true, which the Court does hereby assume for purposes of this order, that the Court would nevertheless find the Administrative Regulation 401, if enforced, is adequate to prevent the types of abuses alleged by the plaintiff as described above.

Therefore, by agreement of the parties, this Court orders that the Illinois Department of Corrections by and through its officers, employees and agents, be enjoined to observe and enforce the rights of residents under the Fourth Amendment to the United States Constitution as those rights may be from time to time be defined by the courts of this jurisdiction, but, for the purposes of this order, not retroactively, and to observe and strictly enforce the provisions of Administrative Regulation 401.

The Illinois Department of Corrections shall further amend its regulation to provide that, in every instance in which a resident's cell is searched, a form shall be filled out indicating the date and time of search and the identity of each officer participating in the search, together with a list of property confiscated, if any. A copy of such report shall be given, in every instance, to the resident within a reasonable time after the search. It is recommended that the remedy for individual instances of cell search abuse should be through the Illinois Department of Corrections' grievance or claims procedure and through the Illinois Court of Claims. Inadvertant or isolated deviations from Administrative Regulation 401 shall not be deemed contemptuous violation of this order, provided, however, that frequent and widespread abuse of this order may be brought to the attention of this Court.

IT IS FURTHER ORDERED that a copy of this order shall be conspicuously posted at the Stateville Branch of the Illinois Department of Corrections and that the contents of this order shall be communicated to each and every employee or agent of the Illinois Department of Corrections who may have occasion to conduct or participate in cell searches.

ENTERED this 22nd day of April, 1977.